

FUEL OIL CONSUMER SALES CONTRACT (Tank Truck Delivery)

THIS CONTRACT, dated January 25, 1957, between SHELL OIL COMPANY, a Delaware corporation with offices at 1219 Westlake Ave. North in Seattle 11, Washington (herein called "Shell"), and Kaiser Gypsum Company, Inc., a Corporation with offices at 5931 East Marginal Way in Seattle 4, Washington (herein called "Buyer"),

WITNESSETH:

1. **PRODUCTS - QUANTITIES:** Shell shall sell and deliver to Buyer, and Buyer shall purchase and receive from Shell, such quantities as Buyer shall order from time to time during the period of this Contract, of the respective "Shell" products specified in the following schedule, but not less nor more (except at Shell's option), during such period, than the minimum and maximum quantities specified in the schedule for the respective products and places of delivery:

"SHELL" PRODUCT	PLACE OF DELIVERY	QUANTITIES (gallons)		
		MINIMUM	MAXIMUM	MINIMUM DELIVERY
Shell Dieseline	5931 East Marginal Way, Sea.	10,000	25,000	400 Gals.
Shell Premium Dieseline	" " " "	8,000	18,000	400 Gals.

2. **PRICES:** The price of each product, f.o.b. the place of delivery, shall be Shell's posted Net Tank Truck price per gallon for such product, f.o.b. the place of delivery, in effect on the date of delivery, as posted at Shell's distributing plant from which deliveries to such place are customarily made hereunder, less \$.025 per gallon.

3. **TERMS:** Terms of payment shall be cash on delivery or such credit terms as may be extended by Shell, which may be altered or revoked by Shell at any time.

4. **DELIVERIES:** Buyer shall purchase and receive each product at each place of delivery in approximately equal quantities during each calendar month, subject to seasonal variations in Buyer's requirements. Deliveries shall be made by Shell by tank truck, into Buyer's tank or tanks at the respective places of delivery specified in the schedule, at any time during day or night that Shell may select; but Shell shall not be obligated to make any delivery at any place of delivery: (a) in any quantity less than the minimum delivery quantity specified in the schedule for such place of delivery, or (b) when Buyer has failed to provide at such place of delivery suitable tank or tanks, with convenient access thereto from Shell's tank trucks, to receive deliveries through hose from such trucks.

5. **PERIOD:** This Contract shall be in effect for the period beginning on January 1, 1957, and ending on December 31, 1957 and thereafter until terminated by either party on 90 days written notice.

ARTICLES 6 THROUGH 14 APPEARING ON THE BACK OF THIS SHEET ARE HEREBY INCORPORATED IN AND MADE PART OF THIS CONTRACT.

IN WITNESS WHEREOF, this Contract is executed as of the date first herein written.

SHELL OIL COMPANY

By [Signature]

"Shell"

Negotiated by:

Kaiser Gypsum Company, Inc.

By [Signature]

"Buyer"

Shell's Salesman

6. **RESALE:** Buyer represents that the products purchased hereunder are for Buyer's own consumption and will not be sold or offered for sale by Buyer; and if any of such products are sold or offered for sale by Buyer, Shell shall have the right to suspend deliveries hereunder or to terminate this Contract by notice to Buyer.

7. **TAXES:** Any tax, duty, charge or fee, now or hereafter levied on the products sold hereunder, or on the raw or processed products from which the products sold hereunder are manufactured or blended, or on Shell, or required to be paid or collected by Shell, by reason of the production, manufacture, blending, inspection, storage, withdrawal, sale, distribution, transportation, delivery or use of said products, or any feature thereof, shall be paid by Buyer, in addition to the prices specified herein, insofar as the same is not expressly included in such prices.

8. **CLAIMS:** Shell shall have no liability to Buyer for any defect in quality or shortage in quantity of products delivered hereunder, unless: (1) Buyer gives Shell notice of Buyer's claim within forty-eight (48) hours after delivery of the products in question, or in case of any latent defect in quality, within forty-eight (48) hours after Buyer's discovery of such defect; and (2) Shell is given reasonable opportunity to inspect such products. Shell shall have no liability to Buyer for any other claim and Buyer shall have no liability to Shell for any claim (except for indebtedness or relating to equipment), arising directly or indirectly out of or in connection with this Contract or any sales or deliveries of petroleum products by Shell to Buyer hereunder, unless the claimant gives the other party notice of the claim within ninety (90) days after the date of the sale, delivery or other transaction or occurrence giving rise to the claim. Every notice of claim shall set forth fully the facts on which the claim is based.

9. **PRODUCT CHANGE AND DISCONTINUANCE:** Shell shall have the right, at any time, to change the grade, specifications, characteristics, delivery package, brand or trade name or other distinctive designation of any product covered by this Contract, and such products as so changed shall remain fully subject to this Contract. Shell shall have the right at any time to discontinue the sale of any product covered by this Contract at the refinery, terminal, bulk plant or other place from which deliveries are normally made hereunder, and thereby be relieved of any further obligation hereunder with respect thereto.

10. **EXCUSES FOR NON-PERFORMANCE:** Either party hereto shall be excused from its obligations hereunder if its performance thereof is delayed or prevented: (1) by any circumstance reasonably beyond such party's control, or (2) by fire, explosion, breakdown of machinery or equipment, riots, strikes, labor disputes, voluntary or involuntary compliances with any law, order, regulation, recommendation or request of any governmental authority or person purporting to act thereunder, total or partial failure of the usual means of transportation of the products to be sold hereunder, or inability to obtain materials used in their manufacture. If, by reason of any of the foregoing, there should be a shortage of or interference with supplies from any of Shell's sources of supply for any place or places (whether or not named herein as places for delivery): (a) Shell shall have no obligation to purchase supplies to enable it to perform this Contract, but may apportion its available supplies among buyers (whether contract or non-contract) in such manner as it, in its judgment, deems equitable, (b) the undelivered quantities shall be deemed cancelled and shall not be required to be made up upon the resumption of full deliveries hereunder, and (c) Buyer shall be free to purchase from other suppliers any deficiencies hereunder caused by the operation of this article.

11. **ASSIGNABILITY:** Neither this Contract nor any claim against Shell arising directly or indirectly out of or in connection with this Contract shall be assignable by Buyer or by operation of law, except with the written consent of Shell.

12. **REMEDIES—WAIVER:** In the event of any breach by Buyer of any of the provisions of this Contract; or any default by Buyer in the payment of any indebtedness to Shell, whether under this Contract or otherwise; or any voluntary or involuntary bankruptcy, receivership, insolvency or reorganization proceedings of or against Buyer; or Buyer's death, disappearance, insanity or incarceration: Shell shall have the right, in addition to any other rights or remedies it may have, to suspend deliveries hereunder or to terminate this Contract by notice to Buyer. Shell's right to require strict performance of Buyer's obligations hereunder shall not be affected in any way by any previous waiver, forbearance or course of dealing.

13. **NOTICES:** All notices hereunder shall be in writing, may be given to Buyer by personal service or regular mail or to either Buyer or Shell by registered mail or telegram, and, in the latter instances, shall be deemed given when the letter is deposited in the mail or the telegram filed with the telegraph company, postage or charges prepaid, and addressed to the party for whom intended at such party's address first herein specified, or at such other address as may be substituted therefor by proper notice hereunder.

14. **ENTIRETY—RELEASE—EXECUTION:** This Contract comprises the entire agreement between Shell and Buyer, and there are no agreements, understandings, conditions, warranties or representations, oral or written, express or implied, concerning the subject matter or in consideration hereof, that are not merged herein or superseded hereby. All prior contracts between Shell and Buyer concerning the subject matter hereof are hereby terminated as of the beginning date of the period hereof; and Shell and Buyer hereby release each other from all claims which each now has against the other, whether or not now known to either, arising directly or indirectly out of or in connection with any such prior contract or any sales or deliveries of petroleum products by Shell to Buyer thereunder, prior to said beginning date, excepting, however, claims of Shell against Buyer for indebtedness or relating to equipment. Neither this Contract nor any subsequent agreement amending or supplementing this Contract shall be binding on Shell unless and until it has been signed in Shell's behalf by a representative duly authorized by its Board of Directors; and commencement of performance hereunder or under any such subsequent agreement shall not constitute a waiver of this requirement.